

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LASANDRA R. BALOUN

Claimant

VS.

MEDICAL ODGE OF DOUGLASS

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

Docket No. 1,002,093

ORDER

Respondent and its insurance carrier appeal the preliminary hearing Order dated April 24, 2002, entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ), found claimant sustained a work-related low back injury through January 21, 2002, and granted claimant's request for preliminary hearing benefits. Respondent contends claimant failed to prove accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board (Board) finds that the ALJ's Order should be reversed and benefits denied.

Claimant, a long term employee of respondent, alleges she injured her low back each and every working day through January 21, 2002.¹ Although the date of accident is alleged as a series, claimant denied noticing any pain in her low back before January 21, 2002. She further denied having any back problems before January 21, 2002. Although claimant denied any particular event or incident precipitated her low back pain on that date, claimant testified that she was able to specifically relate her low back pain to her work activities. Claimant said she just left work early on that date meaning, apparently, that she did not talk to her supervisor. The next day, however, claimant went to her supervisor, Freda Morisse, about her back pain and was given permission to leave early from work.

Claimant first sought medical treatment on January 28, 2002, when she went to her family doctor's office and was taken off-work. When claimant presented the off-work slip to respondent, however, it was not accepted because the slip was from a physician's assistant. Respondent sent claimant to another physician the next day, January 29, 2002, who likewise took claimant off-work, prescribed medication and ordered physical therapy. There is no medical opinion in evidence, however, addressing the cause of claimant's back complaints.

Freda Morisse is a registered nurse and respondent's interim director of nursing. Ms. Morisse testified that she first became aware of claimant's back problems on January 22, 2002, when claimant came to her office and said she needed to go home because her back was hurting "real bad."² Ms. Morisse asked claimant if it happened at work and, according to Ms. Morisse, claimant said ". . . no, it was a chronic problem and that sometimes it just gets really sore."³ Claimant denies saying this to Ms. Morisse. Also present during the conversation were two of claimant's co-workers, Nick Rollins and Shalyn Cody.

Shalyn Cody, testified that she is a registered nurse and has worked for respondent for four years. She recalled the conversation in Ms. Morisse's office wherein claimant ". . . made the statement that she had had back pain for a long time or problems with her

¹ Tr. of Prel. H., at 3 (April 4, 2002); Claimant's form K-WC E-1 Application for Hearing and form K-WC E-3 Application for Preliminary Hearing both described the date of accident as a series up to and including January 26, 2002. At the Preliminary Hearing, however, claimant's counsel announced that the date of accident was "each and every working day up to and including January 21, 2002."

² Tr. of Prel. H., at 33 (April 4, 2002).

³ Tr. of Prel. H., at 33 (April 4, 2002).

back for a long time and that it wasn't from work.”⁴ Ms. Cody also related a conversation she had with claimant earlier that same day, Tuesday, January 22, 2002. She and claimant were outside the respondent's facility when claimant “. . . made the statement that she was down in her back. And she thought part of it was due to the weather change.”⁵

By Stipulation dated April 22, 2002, the parties agreed to the admission of written statements by Nicholas Rollins, Shelly Rader and Tammy Bridges. Mr. Rollins, a certified medication aide, reported that on January 22, 2002, he went with claimant to Freda Morisse's office to explain why claimant needed to be replaced on the floor. According to Mr. Rollins, claimant stated, “My back has hurt for years it did not happen here.”

Shelly Rader's statement relates that on January 26, 2002, she was the charge nurse on the geriatric side of the facility from 2:00 p.m. to 6:00 p.m. She notes that during this time claimant did not ask her for any help lifting or transferring patients. Claimant testified at the preliminary hearing that she had to leave work early on January 26 because the lifting bothered her.

Finally, the statement of the facility's Administrator, Tammy Bridges, relates that she spoke with claimant on January 28, 2002, after being informed that claimant had left work early on January 26, 2002 complaining of back pain. “When asked what had happened, she [claimant] stated she had hurt her back on the 26th (January). She was rather evasive and would not tell us where, what resident, or how this alleged incident occurred. She stated that she has asked for help and no one is willing to help. When asked [to whom] she was referring, she stated it was Shelly Rader this time. Claims she asked her three times for help and that Shelly did nothing.”

After comparing claimant's preliminary hearing testimony to the testimony and statements of the other witnesses, the Board finds that claimant has failed to carry her burden of proving her injury arose out of and in the course of her employment on the dates alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark, dated April 24, 2002, should be and is hereby reversed and benefits are denied.

IT IS SO ORDERED.

⁴ Tr. of Prel. H., at 36 (April 4, 2002).

⁵ Tr. of Prel. H., at 36 (April 4, 2002).

Dated this _____ day of October, 2002.

BOARD MEMBER

c: William L. Townsley, III, Attorney for Respondent
Randall J. Price, Attorney for Claimant
John D. Clark, Administrative Law Judge
Director, Kansas Division of Workers Compensation

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